

SERVICE DATE – DECEMBER 10, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35957

MICHAEL WILLIAMS—CONTROL EXEMPTION—SDR HOLDING COMPANY

Decided: December 10, 2015

On September 15, 2015, Michael Williams (Williams), a noncarrier individual, filed a verified notice of exemption (September Notice) under 49 C.F.R. § 1180.2(d)(2), to continue in control of SDR Holding Company (SDR), upon its acquisition of control of Dakota Southern Railway Company (Dakota Southern), a Class III rail carrier. According to Williams, SDR acquired all the stock of Dakota Southern in 2009, but Williams inadvertently failed to seek and obtain Board authority to continue in control of that carrier. The notice also omitted reference to the Boot Hill & Western Railway Holding Company, which William recently obtained permission to control.

By decision served on October 14, 2015, the Board held the September Notice in abeyance and directed Williams to explain why he postponed seeking authorization for his continuance in control of SDR following the acquisition of stock in Dakota Southern. The Board also requested supplemental information clarifying the parties involved in the acquisition of Dakota Southern, explaining how SDR fits into the corporate hierarchy of Williams' railroads and holding companies, and describing any other railroads that Williams owns that may have been omitted from the notice.

On November 3, 2015, Williams filed supplemental information and amended his September Notice. Williams states that he only retains counsel to advise on rail regulatory issues on a transactional basis and that he did not have counsel in connection with SDR's acquisition of Dakota Southern. Instead, he states that he relied upon counsel for the lender and seller for that transaction. (Williams Supp. Filing 1-2.) Williams asserts that while a subsequent transaction¹ brought his attention to the matter, he inadvertently overlooked further pursuit of authorization. (William Supp. Filing at 2.) Williams explains that he and his wife, Tammy Williams, own the stock in SDR and that SDR owns the stock of Dakota Southern. Williams also owns (by stock) Williams Group, which owns St. Maries River Railroad. Williams and his wife own BG & CM Railroad; Ozark Valley Railroad; McCloud Railway; and Boot Hill & Western Railway Holding Co., Inc. (BHWR). (*Id.* at 3.) Williams amended his notice to include BHWR as a railroad that he owns and controls. (*Id.* at 5.) Williams also notes that he is reviewing recent transactions involving his companies that may require Board filings. (*Id.* at 4 n.1.)

¹ See Williams—Control Exemption—St. Maries River R.R., FD 35365, slip op. at 1 n.3 (STB served Apr. 28, 2010).

On November 10, 2015, the Board received a comment from George A. Huff. Huff states that he sold Dakota Southern to Williams and explains that he did not suggest to Williams that he was exempt from any Board authorization. Huff argues that because of this and other misleading responses in Williams' supplemental filing, the Board should deny the September Notice. On December 2, 2015, Williams filed a response to the comment, including a letter from the bank that provided financing for SDR's acquisition of Dakota Southern indicating that it does not believe Williams intended to mislead the Board. Williams also included a letter in support of Board authorization in this proceeding from Dakota Southern's largest customer.

DISCUSSION AND CONCLUSIONS

Williams has provided supplemental information about SDR and its acquisition of Dakota Southern as requested by the Board. Williams has also amended the September Notice to include BHWR, and the Board is satisfied he has met the notice requirements of 49 C.F.R. § 1180.2(d)(2). While Huff expresses concern regarding Williams' explanation for his failure to obtain authorization from the Board, it does not rise to the level of "false and misleading information" such that the notice cannot go forward.

Accordingly, the Board removes this proceeding from abeyance and the Federal Register notice will be published. The Board notes that Williams did not seek retroactive application of the Board's authorization, and the exemption invoked by Williams does not provide for retroactive effectiveness.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. This proceeding is removed from abeyance.
2. William's notice of exemption will be published in the Federal Register on December 15, 2015.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.